

**Introduced by Senator Calderon**

January 26, 2009

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An act to amend Section 10113.1 of the Insurance Code, relating to viatical settlements.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 98, as introduced, Calderon. Viatical settlements.

Existing law excludes from the definition of a viatical settlement an assignment of a life insurance policy to a licensed lending institution or credit union as collateral for a loan.

This bill would specify that an assignment of a life insurance policy to a licensed lending institution or credit union as collateral for loans is also excluded from the definition of a viatical settlement.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 10113.1 of the Insurance Code is  
2     amended to read:  
3     10113.1. (a) (1) As used in this section, a “viatical settlement”  
4     means an agreement entered into between a person owning a life  
5     insurance policy upon the life of a person with a catastrophic or  
6     life-threatening illness or condition and another person by which  
7     the policy owner receives compensation or anything of value less  
8     than the death benefits of the insurance policy in return for an  
9     assignment, transfer, sale, devise, or bequest of the death benefits  
10    or ownership of the insurance policy, but does not include an

1 assignment of a life insurance policy to a licensed lending  
2 institution or credit union as collateral for a loan *or loans*.

3 (2) As used in this section, “person” means any natural person  
4 or legal entity including, but not limited to, individuals,  
5 partnerships, associations, trusts, or corporations including a  
6 resident or nonresident life and disability insurance agent licensed  
7 by the commissioner.

8 The life and disability insurance agents shall file with the  
9 commissioner a declaration that the person’s life and disability  
10 agent license is valid and in good standing. The life and disability  
11 insurance agent shall provide copies of all endorsements and  
12 appointments received by the agent to engage in the business of  
13 viatical settlements. If the commissioner determines that the agent’s  
14 life and disability agent license is invalid or not in good standing,  
15 or the agent has failed to submit any fees or proper endorsements  
16 or appointments, the commissioner may suspend the agent’s ability  
17 to transact or otherwise be involved in viatical settlements.

18 (b) A viatical settlement shall not include a provision for  
19 payment of cash surrender values, loans or other benefits made by  
20 an insurer in accordance with the policy provisions.

21 (c) Any person entering into a viatical settlement with any  
22 person with a catastrophic or life-threatening illness or condition  
23 shall first obtain the following:

24 (1) A written statement from a licensed medical practitioner  
25 attending the person that the person is of sound mind and under  
26 no constraint or undue influence.

27 (2) A duly witnessed signed document in which the person  
28 consents to the viatical settlement, acknowledges the catastrophic  
29 or life-threatening illness, represents that he or she has a full and  
30 complete understanding of the viatical settlement, that he or she  
31 has a full and complete understanding of the benefits of the life  
32 insurance policy, a release of his or her medical records, and  
33 acknowledges that he or she has entered into the settlement freely  
34 and voluntarily.

35 (d) No person domiciled, residing or conducting business in  
36 California may do any of the following unless he or she has  
37 complied with subdivision (c):

38 (1) Enter into a viatical settlement with any person, domiciled  
39 or residing in California.

40 (2) Execute a viatical settlement in whole or in part in this state.

- 1     (e) A violation of this section is a misdemeanor.

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